



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** OptiMetrics, Inc.; NU-TEK Precision  
Optical Corporation

**File:** B-235646; B-235646.2

**Date:** September 22, 1989

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### DIGEST

1. Contracting agency's cost realism analysis involves the exercise of informed judgment, and the General Accounting Office will not question such an analysis unless it clearly lacks a reasonable basis. Reasonable basis is provided by determination that awardee's technical approach is feasible, by Defense Contract Audit Administration analysis of awardee's rates, and by reconciliation of awardee's estimated costs with the independent government cost estimate.

2. Contracting agency may accept a technically lower rated proposal to take advantage of its lower costs, even though cost is the least important evaluation criterion, so long as agency reasonably decides that the cost premium involved in an award to a higher-rated, higher-cost offeror is not warranted in light of the acceptable level of technical competence available at the lower cost.

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### DECISION

OptiMetrics, Inc. (OMI), the incumbent contractor, and NU-TEK Precision Optical Corporation protest the award of a cost-plus-fixed-fee contract to Science and Technology Corporation (STC), under request for proposals (RFP) No. DAAD07-87-R-0140, issued by the United States Army White Sands Missile Range. OMI and NU-TEK principally contend that the Army did not properly evaluate the cost realism of

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STC's cost proposal, and otherwise misevaluated proposals. We deny the protests.<sup>1/</sup>

The RFP, issued as a 100 percent small business set-aside, sought proposals for directed energy and electro-optical atmospheric research support services at the United States Army Atmospheric Sciences Laboratory (ASL), which is dedicated to researching atmospheric effects on Army weapon systems and operations. The RFP required the successful contractor to provide scientific, engineering, and technical support for specific tasks relating to the directed energy and electro-optical areas of ASL's mission. While the RFP contained a general scope of work, the specific tasks were to be implemented by work assignment orders which are to be defined as particular efforts and problems develop. The proposed contract was for a 1-year base period with four 1-year options.

The RFP provided that award would be made to the offeror whose technical proposal rating and evaluated cost were determined to represent the "best buy" to the government. The RFP contained two principal evaluation criteria, technical and management, with technical being three times as important as management.

Concerning cost, the RFP stated it was the least important factor, but cautioned offerors that as technical merit tends to equalize among offerors, cost would become a more significant factor in the selection process. The cost evaluation was to include an analysis of all proposed costs by comparison with the government cost estimate and by appropriate consideration of information from the Defense Contract Audit Agency (DCAA), government technical personnel, and other sources. The RFP included precise minimum qualifications and maximum level-of-effort estimates for several labor categories--such as Principal Investigator, Senior Scientist, and Junior Scientist. The RFP estimated the number of hours required and provided the anticipated labor skill mix, with offerors basically proposing labor rates, indirect expenses, and fees. The RFP also contained normalized estimates to be used by all offerors for travel

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<sup>1/</sup> NU-TEK also protests that the evaluation of OMI's proposal was improper because OMI proposed an extended work week. However, since we find that award to STC was proper and in accordance with the evaluation criteria, we will not address this issue.

requirements and for purchases of supplies, material, equipment and services.

Four timely proposals were received in response to the RFP. One of the proposals was determined to be technically unacceptable and excluded from the competitive range. The Proposal Evaluation Board (PEB) found the remaining three proposals acceptable and as meeting the requirements of the RFP. Written and oral discussions were conducted with these offerors, and best and final offers (BAFOs) requested. OMI's, NU-TEK's, and STC's revised proposals were evaluated as follows:

<u>Contractor</u>	<u>Score</u>	<u>BAFO</u>
Government Estimate	100	41,500,000
OMI	94.1	36,992,204
NU-TEK	82.9	37,663,034
STC	85.7	30,550,860

The contracting officer found that, except for cost, the proposal scoring was close and that most substantive technical differences between OMI and STC were in the scoring factors, "technical understanding" and "personnel availability." These scoring differences were not considered significant and were attributable to the normal experience advantage enjoyed by an incumbent contractor. The contracting officer determined that the higher technical and management competence of the OMI proposal as compared with the STC proposal was not sufficient to justify the additional expense. Award was therefore made to STC on the basis of its lower cost.

OMI and NU-TEK protest that the Army failed to conduct a proper cost realism analysis of STC's unrealistically low cost proposal.<sup>2/</sup> The protesters' cost realism allegation is based primarily on the fact that STC's cost proposal for the

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<sup>2/</sup> In addition, OMI in its initial protest raised several other issues, including that the Army engaged in technical leveling and that STC may have submitted an untimely proposal. The Army in its report responded in detail to these allegations, and OMI in its comments did not rebut the Army's response. We consider the other issues to have been abandoned by the protester and will not consider them. See TM Systems, Inc., B-228220, Dec. 10, 1987, 87-2 CPD ¶ 573.

basic requirement was more than 25 percent less than the government estimate. OMI argues that the RFP stated that reasonableness and realism of an offeror's costs would be judged by comparing those costs to the government estimate and that, contrary to the RFP, the Army disregarded the government estimate.

Initially, we note that the evaluation of competing cost proposals requires the exercise of informed judgment by the contracting agency involved. This is so because the agency is in the best position to assess "realism" of cost and technical approaches and must bear the difficulties or additional expenses resulting from a defective cost analysis. Since the cost realism analysis involves the exercise of judgment by the contracting agency, our review is limited to a determination of whether an agency's cost evaluation was reasonably based. Quadrex HPS, Inc., B-223943, Nov. 10, 1986, 86-2 CPD ¶ 545.

We have reviewed the Army's cost realism evaluation here in light of OMI's and NU-TEK's allegations and find that the results reached were reasonable. The Army's evaluation consisted of a quantitative and qualitative review performed by the PEB and audit reports furnished by DCAA for STC and its proposed subcontractor. The Army in its cost analysis verified all direct labor costs including proposed escalation and indirect charges, off-site overhead, general and administrative expense, and subcontract/material handling. The Army also evaluated other direct charges, such as the normalized travel cost, the cost of money, proposed fee, tax burden, and phase-in costs.

STC's direct labor rates were higher than those of the other offerors for professional labor categories. STC's other labor rates were slightly lower than OMI's but were determined by the Army to be representative of the labor rates paid for similarly skilled labor on other contracts and consistent with minimum rates prescribed by Department of Labor Area Wage Determinations. Additionally, DCAA performed a complete audit of STC's pricing proposal, and no exception was taken to STC's proposed indirect expense rates. The cost realism evaluation resulted in a modest increase in STC's proposed cost. Moreover, as a result of the cost evaluation, the Army considered the labor force proposed by STC to be an innovative approach to satisfying the government's requirements that would result in a considerable savings to the government without sacrificing performance.

OMI, however, takes exception to the Army's cost evaluation on the basis that the solicitation specifically stated that

proposed costs would be compared to the independent government estimate and that since STC's costs were substantially below the estimate it should have been rejected. We disagree. As previously stated, with respect to the evaluation of cost, the solicitation specifically provided that "[t]he offeror's proposed costs will be evaluated by comparison with the government cost estimate and by appropriate consideration of information from the Defense Contract Audit Agency, Government Technical Personnel, and other sources." The solicitation clearly did not limit the cost evaluation to merely a comparison between proposed costs and the government estimate.

Moreover, we have recognized that where, as here, the government estimate is not revealed to offerors and proposals substantially deviate from that estimate, the contracting agency should consider the possibility that the proposals may nevertheless be advantageous to the government and conduct discussions with the offerors concerning the discrepancy. See Teledyne Lewisburg; Oklahoma Aerotronics, Inc., B-183704, Oct. 10, 1975, 75-2 CPD ¶ 228. Here, the record indicates that the Army performed a complete analysis of the difference between STC's proposed cost and the government estimate. The government estimate was based primarily on historical expenditures which naturally related to OMI's technical approach as the incumbent. There was essentially no significant difference between STC's direct labor costs and the government estimate. In fact, STC's proposed labor costs were even higher than OMI's. The vast majority, approximately 80 percent, of the difference in STC's cost relate to indirect expenses which were verified by DCAA. Additionally, STC proposed a fee that was several percentage points below the government estimate. Under these circumstances, we conclude that the Army's cost realism determination was reasonable.

Next, the protesters argue that the Army failed to consider STC's mandatory extended work week for professional employees in evaluating STC's technical proposal and that the extended work week strategy has a significant impact on price. In this respect, the protesters contend that STC's professional employees are required to work a 44- to 48-hour week in order to receive full base pay.

We have no basis to disagree with the Army's evaluation here. The protesters essentially argue that STC's alleged extended work week afforded STC an advantage in pricing its proposal because it allowed STC to give the impression that it offered a lower per hour labor rate when in fact the total labor cost is the same. Given the fact that STC's proposed total labor costs are greater than those of the

protesters and, in fact, since STC's average labor rate per hour was greater than OMI's, we cannot say that STC's alleged extended work week strategy gave it any significant competitive advantage. Moreover, the record shows that the Army thoroughly evaluated the labor rates proposed by STC and determined that they were realistic for STC to hire and maintain an acceptable workforce.

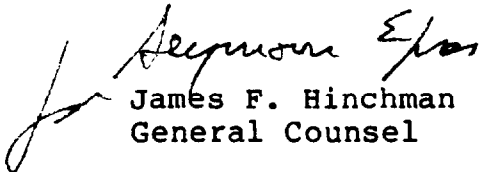
Additionally, OMI contends that the Army failed to eliminate a material competitive advantage accruing to STC, in that, contrary to the solicitation, STC proposed virtually all of its staff of approximately 65 persons to work on the government's site. Specifically, OMI argues that the RFP provision which stated that "[i]t is anticipated that offices for up to forty (40) people will be required," implied that the Army resources that would be made available to the successful offeror in the initial stages of the contract were limited to a maximum of 40 persons at the government's site. OMI states that it relied on the 40-person on-site limit in preparing its proposal which played a significant factor in OMI's selection of its final proposed mix of off-site, on-site, and subcontractor labor, thus affecting its price. OMI argues that the Army had a responsibility to assure a level playing field by adjusting the offers for the value of the extra government resources being required by STC. It is OMI's position that had this been done, the competitive advantage that accrued to STC would have been eliminated, and the price difference between the two proposals would have effectively disappeared.

We disagree that the solicitation limited the number of on-site personnel offerors could propose. At most, the solicitation indicated that the government anticipated only to have to provide for up to 40 on-site persons. The record indicates that STC proposed accommodations (in the form of portable trailers) for its proposed on-site employees, at no cost to the government. The solicitation did not limit the number of on-site personnel but merely indicated that the government only would provide resources for a limited number of persons. STC in its technical approach offered to provide additional resources for its on-site personnel, and OMI could have elected to do the same. (OMI in its approach made extensive use of off-site personnel.) The burden is on the offeror to submit a proposal that is both technically acceptable and cost effective, and the agency, in our view, has no duty to adjust a totally acceptable approach by one

offeror because its competitor proposed a better and more cost effective approach.<sup>3/</sup>

Here, the RFP stated that award would be made to that offeror whose proposal is determined to represent the "best buy" to the government. The RFP further stated that "as technical merit tends to equalize among offerors, cost will become a more significant factor in the selection process." In a negotiated procurement, even if cost is the least important evaluation criterion, an agency properly may award to a lower-priced, lower-scored offeror if it determines that the cost premium involved in awarding to a higher-rated, higher-priced offeror is not justified given the acceptable level of technical competence available at the lower cost. AMG Assocs., Inc., B-220565, Dec. 16, 1985, 85-2 CPD ¶ 673. The Army considered all offerors to have submitted technically acceptable proposals and determined that award to STC, the low offeror, represented the "best buy" to the government. In our opinion, the Army's decision to award to STC, as the low technically acceptable offeror, was reasonable and consistent with the RFP's evaluation scheme, given the savings to the government of more than \$6 million during the life of the contract.

The protests are denied.

  
James F. Hinchman  
General Counsel

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<sup>3/</sup> OMI also contends that STC submitted a generic phase-in plan that did not comply with the material requirements of the RFP. Our review of the record, however, reveals that STC submitted a detailed and fully acceptable phase-in plan with an estimated cost breakdown at no cost to the government.